

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,

Plaintiff,

v.

FITBIT, INC.,

Defendant.

Civil Action No. 1:19-cv-11586-FDS

**UNOPPOSED MOTION TO IMPOUND/SEAL DESIGNATED
MATERIAL**

Pursuant to Local Rule 7.2 and the Order Adopting Discovery Stipulation and Modified Protective Order in this case (ECF No. 59, the “Protective Order”), Plaintiff Philips North America LLC (“Philips”) respectfully requests the Court to impound (seal) Material related to Philips’s Motion for Partial Summary Judgment of Direct Infringement and No Invalidity on iFit Prior Art (Dkt. 335). Specifically, Philips requests the Court to seal Philips’s Memorandum and Statement of Facts in Support of its Motion for Partial Summary Judgment (Dkt. Nos. 340-341) as well as Exhibits A, K-X, Z, AA, AD-AG, AN-AP, AW, BB, BC, and BE filed in support thereof.

The Protective Order allows parties to designate discovery material that contains or constitutes confidential business information as “CONFIDENTIAL.” As grounds for this Motion, Philips states that Philips’s Memorandum, Statement of Facts, and identified Exhibits contain discussion of Fitbit’s confidential business information as well as discussion of third-party Icon’s confidential business information. Specifically, Exhibits P-X, Z, AD-AF, AW, BB, and BC are all internal Fitbit documents marked by Fitbit as Confidential under the Protective Order as they describe confidential business information relating to certain features of Fitbit’s accused smart watch and fitness trackers and describe confidential business information relating to Fitbit’s

marketing strategies. Exhibits A and L are the technical expert reports of Dr. Martin and Dr. Paradiso, respectively, which were both marked as Confidential under the Protective Order as they discuss confidential business information relating to certain features of Fitbit's accused smart watch and fitness trackers and describe confidential business information relating to Fitbit's marketing strategies. Exhibit AA is an exhibit attached to the technical expert report of Dr. Martin that reflects Fitbit's confidential business information relating to the number of users that use its systems. Exhibits N and O are excerpts from the transcripts of the depositions of Dr. Martin and Dr. Paradiso respectively, both of which were designated as Confidential under the Protective Order as they discuss confidential business information relating to certain features of Fitbit's accused smart watch and fitness trackers. Exhibits K, M, and AG are excerpts from the transcripts of the depositions of Fitbit employees Mr. Ryan Krems, Mr. Gilles Boccon-Gibod, and Ms. Preethi Mukundan, respectively. Each of those transcripts were designated as Confidential under the Protective Order as they describe confidential business information relating to certain features of Fitbit's accused smart watch and fitness trackers and describing confidential business information relating to Fitbit's marketing strategies.

Further, in response to a subpoena, Icon Health & Fitness ("Icon"), a third party to this matter, produced documents related to the design and operation of several of their fitness products and services and marked these documents as confidential under the Protective Order because Icon believed them to include confidential business information. Exhibits AN-AP are documents marked as Confidential under the Protective Order by Icon that deal with the design and operation of their fitness products and services. Icon likewise designated the transcript of the deposition of one of their employees, Ms. Logan, as confidential under the Protective Order. Exhibit BE is an excerpted version of the transcript from this deposition.

Additionally, Philips's Memorandum and Statement of Facts in Support of its Motion for Partial Summary Judgment each contain discussion throughout of the Fitbit and Icon confidential business information referenced above.

For the foregoing reasons, Philips respectfully requests that the Court permit Philips to file under seal its Memorandum and Statement of Facts in Support of its Motion for Partial Summary Judgment (Dkt. Nos. 340-341) as well as Exhibits A, K-X, Z, AA, AD-AG, AN-AP, AW, BB, BC, and BE filed in support thereof. Philips further requests that these documents remain impounded until further Order by the Court, and that upon expiration of the impoundment, these document be returned to Philips's counsel.

Dated: March 2, 2022

Respectfully Submitted,

/s/ John W. Custer

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LOCAL RULE 7.2 CERTIFICATION

I, John W. Custer, counsel for Philips North America LLC, hereby certify that counsel for Philips has conferred with counsel for Fitbit, Inc. to resolve the issues presented in this motion and that counsel for Fitbit indicated that Fitbit does not oppose the relief requested by this motion.

Dated: March 2, 2022

/s/ John W. Custer

John W. Custer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Court through the ECF system and that a copy will be electronically served on registered participants as identified on the Notice of Electronic Filing.

Dated: March 2, 2022

/s/ John W. Custer

John W. Custer